

APPROVED

## AMESBURY PLANNING BOARD MEETING 62 FRIEND STREET, AMESBURY, MA.

JUNE 13, 2016

Meeting called to order at 7:05 PM

**PRESENT:** Scott Mandeville, Robert Laplante, Ted Semesnyei, David Frick, Lars Johannessen, Lorri Krebs.

**ABSENT:** Karen Solstad (arrived at 7:08 pm)

**ALSO PRESENT:** Nipun Jain, Planner, Barbara Foley, Recording Secretary, transcription by Joan Baptiste

**MINUTES:** May 9, 2016: Motion to approve by Robert Laplante subject to changes. Page 1 107 Macy St line 8 storm water instead of store water. And page 7 top under Robert Laplante...something missing, something added, something merged...under Nipun as to lot 11 the driveway now changes to roof .... (staff will listen to the audio and revise it), then on page 13 two motions and a vote regarding 60 Merrimac Street, Hat Factory, Phase 2...neglects to mention that Robert Laplante recused himself. Seconded by Ted Semesnyei. AIF subject to revisions.

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Karen arrived @ 7:08

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May 23, 2016: Motion to approve by Robert Laplante with one correction on page 4, 5<sup>th</sup> line from top....modification is earthen berm (spelling correction), seconded by Scott Mandeville. AIF.

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**SIGN APPLICATION:** Kaylee Ruth's Kitchen, 115A Main Street – Roger Small, 115A Main Street. Wife is proprietor.

**David Frick** – The Design Review Committee reviewed the sign so I will turn this over to Lars.  
**Lars Johannessen** – It's unfortunate that the sign has already been installed.

**Roger Small** – I asked the Building Inspector for a temporary permit.

**Lars Johannessen:** The sign has already been made which is unfortunate because there are some changes that we would like to recommend. When you look at the sign it doesn't read well. The green and the black with the white stripe makes the lettering illegible as one drives by. It would be suggested by the board that you change the lettering to remove the white. Established 2016....we would suggest that be removed.

**Roger Small:** If we remove 2016 and the white would that be agreeable?

**Lars Johannessen:** You don't have to remove the white just make it black.

**Motion by Lars Johannessen to approve the sign with modifications to include removing Established 2016 and covering the white stripe with black which would make the lettering more visible. Second by Scott Mandeville. AIF**

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### CON'T PUBLIC HEARINGS:

**47 ½ - 57 Kimball Road Subdivision Motion by Lars Johannessen to continue to June 27 meeting. Second by Scott Mandeville. AIF**

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**24 Pond View cont. Motion to continue to June 27 meeting by Scott Mandeville, second by Lars Johannessen. AIF**

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**Motion by Scott Mandeville to take 28 Lake Attitash Road: Special Permit Application Water Resource Protection District out of order, second by Lars Johannessen. AIF**

**Motion by Lars Johannessen to continue 28 Lake Attitash Road to June 27. Second by Ted Semesnyei. AIF**

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### NEW PUBLIC HEARING:

**Motion by Lars Johannessen to continue 28 Lake Attitash Road Special Permit Wetlands and Flood Plain, second by Ted Semesnyei. AIF**

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### ADMINISTRATION:

**Motion by Lars Johannessen to take Ordinance – Bill 2016-028 out of order, second by Ted Semesnyei. AIF**

**Councilor Jonathan Sherwood, 39 Whittier Street, District 6 City Councilor presenting.**

Looking for a representative from the Planning Board to serve on the newly established Open Space, Natural Resources and Trails Committee. They will be joining a Conservation Commission member, 1 to 2 from Municipal Council and 3 from the general public.

Mission is to work on the current draft Open Space and Recreation Plan to create a document to submit to the state for approval.

**Lars Johannessen:** Isn't there a Lakes and Waterways Committee and a Parks and Recreation Committee??

**Councilor Sherwood:** Yes. I've spoken to both committees. The new committee will most likely meet monthly. There may be subcommittees.

**David Frick:** It would be helpful to the Planning Board if the City would be interested in some of the opportunities of open space and trails that come before us.

**Councilor Sherwood:** That is part of the plan.

**David Frick:** The unfortunate thing now is that some of the trails that are designated as such are not maintained.

**Councilor Sherwood:** There are citizen groups that are beginning to get involved in that sort of thing.

**Karen Solstad:** We need to remind abutters that there are public accesses near their properties.

**Councilor Sherwood:** We want to help support the boards in making sure that those public access resources are protected.

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**Motion by Lars Johannessen to appoint Lorri Krebs to the Open Space, Natural Resources and Trails Committee. Second by Scott Mandeville. AIF**

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**60 Merrimac Street-Hatters Point Marina**  
**Robert Laplante recuses himself.**

**Nipun Jain:** At the last meeting the board asked the Planning staff to draft a decision. (Board members have a printed copy before them).

It is a summary of our standard conditions for special permit and site plan review approval. The board had specific concerns regarding landscaping which have been addressed.

**Paul Gagliardi:** The only issue is in regards to the plants that died. Jay (McPartland) would like to come with a list of what he's planning on planting.

**Jay MacPartland:** When we acquired the Marina property most of the plantings in that area were dead and overgrown with grass.

**Nipun Jain:** I would recommend that the applicant present the plan to the subcommittee within the next 30 days so that it can be reviewed and let the plan be approved before the occupancy of the proposed project.

That would be a modification to the condition on page 14. The board can modify that.

**David Frick asks for a side bar conference.**

**Nipun Jain:** On page 2 where it states "approval of the site plan special permit and conditions thereto" the third and fourth line should reflect that the project is Hatter's Point Marina as shown on the approved plan versus what it currently states. The remaining draft decision is reviewed.

**Paul Gagliardi, attorney for the applicant:** On section 2 item 2 transfer of permits. Does that mean if the marina is sold, we have to come back to the planning board?

**Nipun Jain:** No because once you have exercised the special permit and you have built it and received an occupancy permit that is no longer valid.

**Motion by Scott Mandeville to accept the draft decision with the changes that were discussed, second by Lars Johannessen. 6 in favor, 1 recused.**

**Motion by Ted Semesnyei to close the public hearing for 60 Merrimack Street, Hatter's Point Marina, second by Lars Johannessen. 6 in favor, 1 recused.**

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**60 Merrimac Street, The Marina at Hatter's Point – Chapter 91 Waterways License**

**David Frick:** You want the board to acknowledge receipt of the License and sign off.

**Motion by Lars Johannessen to acknowledge receipt and sign off the Chapter 91 Waterways License for 60 Merrimac Street, Marina at Hatters Point. Second by Ted Semesnyei. 6 in favor, 1 recused.**

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**36 Haverhill Road – Amesbury Heights**

**Nipun Jain:** There is no representative in attendance. This is tabled to the end of the meeting.

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**Motion by Scott Mandeville to take Point Shore Meadows out of order, second by Lars Johannessen. AIF**

**Point Shore Meadows, 19 Evans Place, Lot 11 lot release.**

**Ben Osgood**, civil engineer representing the applicant have submitted the lot release request. Will be building the same style as was built on Lot 13 but is reconfigured to have the driveway off Point Shore Overlook instead of Morrill Farm Rd (aka Point Shore Drive) with retaining wall between Lot 11 and 10. Garage doors will not be seen coming up the main road. We have also submitted house styles for other lots but Lot 11 is under agreement and we'd like to get going on it. Lot 11 plan is drawn with no house on Lot 12. We will be coming to the board with an alternative plan to add homes on the top of the hill.

**Nipun Jain:** Because Lot 12 will not be developed and the grading between Lots 11 and 12 will be modified, the developer has stated that he will be building stone wall along the right of way similar to the one at the entrance. Will require a waiver for front yard setback. Re: Performance bond prior to release of lots. Applicant should submit an estimate of what it should be to complete the project. The board could move forward to release Lot 11 with the other 10 lots still being held by the covenant.

**Ben Osgood:** We are currently working on the Performance Bond estimate.

**David Frick:** We can have all but one signature and when it is completed, I will sign.

**Ben Osgood:** The surveyor is creating the as built plan.

**Motion by Karen Solstad approve the front yard set back waiver for Lot 11 on Point Shore Road (aka Morrill Farm Road on the approved plans) from 25 feet to 17 feet. Second by Robert Laplante. AIF**

**Motion by Lars Johannessen to allow release lot 11 for building and sale provided the items we discussed (interim as built, performance bond estimate, updated grading and retaining wall details from top to bottom, landscaping plan between stone retaining wall tiers, landscape buffer between lots 11 and 10, etc. are submitted prior to release, second by Robert Laplante. AIF**

**Nipun Jain:** Once the release form is completely signed it must be recorded before any activity can take place.

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**Motion by Lars Johannessen to table 36 Haverhill Road to the end of the meeting. Second by Ted Semesnyei. AIF**

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**Water Street – Former Manufacturing Gas Plant – Remediation Project.**

**Request for determination of a modification to approved site plan**

**Nipun Jain:** At the last meeting the board made a determination that this could be considered a minor modification and asked the staff to resolve concerns that were raised at the meeting. I met with the applicant and their team to go over clarification on what changes were being made to the plan with regards to additional clearing or additional temporary access areas. The only changes that are being made are in the way construction activity will take place. That has been approved by the Conservation Commission. I have submitted documentation.

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The board would approve the minor modification. The plans that would be now considered final are the plans that were submitted to you documented by a letter dated May 23, 2016. The changes that are being made are listed on page 2 under the allowed use and will reference the amended order of conditions that was issued by the Conservation Commission. Another change that is being made is as it relates to change in project design. There are changes that are approved by the board's observation consultant during construction activity and given the nature of construction which is site grading it's very difficult to do that every time that change has to be approved by the board so this modification states that you will authorize the planner as a designee or the consultant to authorize those changes. If in the opinion of either feels that they should obtain Planning Board approval the applicant will return to the board.

**Michael Giamo:** For National Grid, yes we agree with the changes and accept them.

**Motion by Scott Mandeville to accept the changes as a minor modification to the Water Street – Former Manufacturing Gas Plant – Remediation Project.**

**Request for determination of a modification to approved site plan, second by Lars Johannessen. AIF**

### 36 Haverhill Road – Amesbury Heights

**Nipun Jain:** You will recall there is an Erosion Control Bond that is required and because the bond is through an insurance company and their license is expiring on June 30, 2016 the developer has been asked to provide documentation showing that the insurance company has the ability to stand behind the bond or to provide a bond through another agency. We have not yet received confirmation, but I did speak with the developer and supposedly they are going to provide us with confirmation by the end of this week.

If I don't receive anything I will send a letter on your behalf stating that the bond must be valid and the city should have the ability to exercise its rights within the bond. I will update you at the next meeting.

### 37 Middle Road (Eastern Lights)

**Eric Botterman,** Millenium Engineering: With me is Tom Anderson owner, Charles Haughton, Attorney. This project was designed in 2008 by another engineer. The Planning Board signed the plans in April, 2014. Construction started last year. The contractor Bill Charette was given a cease and desist from the local Conservation Commission. He didn't know why as he was building as per the approved plans. A month later Tom (Anderson) got a consent order from DEP saying that he wasn't building in conformance with DEP standards. What we discovered happened, the Planning Board signed 11 sheets – (shows sheet 4 from the set of 11) Sheet 4 was an incorrect sheet. Somehow between when it was designed and when it was signed sheet 4 had been changed. The two changes that were made to sheet 4 were regarding a jurisdictional wetland and a detention basin. DEP does not allow you to build a detention pond in a wetland. From a local standpoint, there is an isolated wetland that is not jurisdictional to the state but is jurisdictional to the local Conservation Commission. We re-created the original sheet 4 which eliminates the impact to the wetland and the isolated wetland. Bob Prokop has worked with DEP and they have signed off on this plan with the condition that the work be completed by the end of June. We are here to show you that this is the plan that should have been signed. We ask for your approval and signature on the sheet. The highlighted changes are the only changes that have been made on the plan.

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**Nipun Jain:** summarizes the history of the project as seen by the planning office: August 2014 is when the plans were endorsed and activity started on the subdivision. November 2014 is when the last activity took place at which time it was determined there were some improvements made that have not been inspected by the board's consulting engineer. We asked the contractor to explain how they are going to provide verification of those improvements that they comply with the approved subdivision plan. From that point on activity stopped on the project.

In February 2015, a cease and desist was issued by the Amesbury Conservation Commission on the behest of DEP when they found there was some activity that had taken place within the jurisdictional area that was not in compliance. At the same time, the zoning compliance officer also issued a cease and desist for noncompliance with the Planning Board's subdivision approval. All through 2015 from April through October the project was on the planning board's agenda, six times if not more, requesting an update and we never got any. Since that time we have been facing so many complaints from the abutters with regards to the condition of the site, with regards to machinery that has been on the site and trash. We had a meeting in October of 2015 with the developer and the engineer to discuss those issues and it was a very productive meeting in my opinion. Things were supposed to get back on track. Unfortunately, they had just started their due diligence and with the closing of the construction season they were not able to document everything that they were forced to do this year.

DEP has reviewed what was the discrepancy between the plans that the contractor was using versus the plans that they had approved. That issue has been resolved.

I would have the applicant also explain what is the current status of approval by the local Conservation Commission or when do they intend to take that up. That should be the basis of how you endorse this plan.

**Eric Botterman:** This plan was going to be in front of the Conservation Commission at their last meeting for which they had no quorum. Now it is scheduled for June 20<sup>th</sup>. Bob Prokop will be here to discuss that plan with them and also get an extension of the OOC that is close to expiring. The other thing I am happy to report is Tom (Anderson) has an able and willing buyer who is going to undertake doing the remediation work immediately to satisfy DEP and he is also going to complete the site.

**Nipun Jain:** That decision will have to be recorded before it takes formal legal standing.

**Eric Botterman:** There will be nothing to record. They have to extend the order of conditions which is a vote that is handled with a letter. If they want the plan recorded we can do that. They don't typically require plans to be recorded.

**Nipun Jain:** There is an enforcement order and a cease and desist which they will lift. Once it's lifted that action has to go on record.

**Eric Botterman:** Yes.

**Nipun Jain:** So once that happens then you will be able to proceed with the intended activity of modifying per the DEP condition.

**Eric Botterman:** Hopefully after Monday night the Conservation Commission will be comfortable enough to let them start immediately because they have to finish by June 30 or DEP is going to be upset.

**Nipun Jain:** Do we have a schedule? An estimate of how long it will take to do what DEP asks.

**Eric Botterman:** We met with contractor and he figures about 10 days – if things go right it could be 5 days. He thinks he can get it done by the end of the month if he can start early next week. At this point it's in everyone's interest to get the job done.

**David Frick:** What about the work that was done that wasn't properly documented and inspected. Has that issue been addressed?

**Eric Botterman:** One of the things we did which the contractor hired us for was to do a partial as-built of infrastructure, drainage, sewer, etc. We know that those systems will work. We know that the grading is close enough that they will work. We have no idea about the water main and sewer. They have to be tested still. The gentleman buying it is well aware of the fact that those things have to be tested and approved by the city before they get accepted and houses are tied into the systems.

**Nipun Jain:** There were some recommendations made at the site visit in October. What everyone agreed on both the city side and the developer side at that time was that they can do some video cam data that can be used to verify and other things that were recommended by the board's consultant and acceptable to DPW as far as verification of some of the items that had not been done. We would recommend that that be required along with the approval of any activity that the Conservation Commission approves to meet DEP requirements. Also an interim as-built was prepared. It should be required to include the activity that DEP is going to require as far as lifting the cease and desist. And the third thing which has been hanging around forever is the culvert. That was a prerequisite before anything even happened on the subdivision. We gave the developer a break at that time to start this work and now DPW is asking when is that going to be done. We should ask the developer to start working on a construction schedule to provide some answers to the board so that we can get back to the abutters or relevant officials when they ask about that. That has been the biggest issue...we don't have any formal communications with regard to schedule, with regards to completion of activity within the right of way and infrastructure or of the bonds that need to be established so that this project can be completed.

**Eric Botterman:** I can speak to that. Last fall, when we met we had developed a schedule and the idea was to try to get a lot of the work done. Obviously that never happened. The gentleman that is buying it now is well aware of the city's desire/requirement to do the culvert on Middle Road first. He is developing a schedule for us now to let us know what his schedule will be for construction with the idea being the culvert needs to be done first. The best time to do that is in the summer when there are no school buses, etc. We will be in front of you with a schedule. We have a bond estimate.

**Nipun Jain:** Can you give us a general idea when...30 days or ?? 45 days.

**Eric Botterman:** I would like to think it won't even be 30 days. As soon as I can get the information from the gentleman buying it... I don't know what the closing date is. He is waiting to hear how it goes with the city.

**Bob Laplante:** When would you expect after the new owner takes over for stuff to actually get going and the project ...?

**Eric Botterman:** The day he closes on it. His goal is to do all this remediation replication work that needs to happen and then he plans on staying there and working immediately.

**Nipun Jain:** Is he going to work as an agent of the owner for that specific work and then take ownership?

**Eric Botterman:** Yes he is. And the gentleman buying it is also a contractor so he has complete control over his equipment. So when he says he's going to do something he can make sure it's going to happen.

**Attorney Charles Haughton,** represents Tom Anderson: We have an agreement with Joe Phalen. He will be the contractor who will do work before he actually purchases the property. Once we get approvals from your board and Conservation Commission we will have a closing.

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**Nipun Jain:** The reason why you need the board to approve this sheet is why?

**Eric Botterman:** We need to record it.

**Nipun Jain:** Part of the reason you are here is to get a modification to the approved plan.

**Eric Botterman:** Yes.

**Nipun Jain:** Because it is a modification the board needs to make a determination if it is minor or major. That is the first step the board will be doing which is determining that it's not a major change because it does not change the density or the overall intent and purpose under zoning or subdivision control. Second, once they make that determination, they would then authorize the plan to become the plan going forward subject to approval from Conservation Commission.

**Ted Semesnyi:** The DEP and Conservation Commission saw a different set of plans – this sheet (4) was different.

**Eric Botterman:** What they saw was the plan that was approved by the planning board which included sheet 4 which was incorrect. They have since seen the revised/corrected sheet 4 plan.

**Nipun Jain:** DEP finally figured out that the plans they approved were not the plans that were presented to the planning board for endorsement. Rather than trying to get DEP to approve the plan that had serious deficiencies, the plan that DEP approved is being brought to you as a modification to the originally recorded plan.

**Ted Semesnyi:** I thought it would be helpful to attach the original plan.

**Nipun Jain:** If the board votes to approve this sheet 4 as a modification then we would recommend that you do it provided 1.) you get a recorded copy of the action by DEP that allows this change; 2.) a copy of the recorded action by the local conservation commission that documents that they have endorsed the changes to the plan on both the local and state; 3.) require that the applicant provide a detailed construction schedule for outstanding work within the next 30 days; 4.) provide a interim as-built documenting all the things that have happened to date and a future course of action for verifying infrastructure that has been in place and complies with the approved plan and if not so then document how those changes are acceptable to the board.

**Motion by Robert Laplante that the board determines the changes to be a minor modification, second by Ted Semesnyi. AIF**

**Motion by Ted Semesnyi that the documentation required laid out by Nipun [1. recorded copy of the action by DEP that allows this change; 2.) copy of the recorded action by the local conservation commission that documents that they have endorsed the changes to the plan on both the local and state; 3.) the applicant provide a detailed construction schedule for outstanding work within the next 30 days; 4.) provide a interim as-built documenting all the things that have happened to date and a future course of action for verifying infrastructure that has been in place and complies with the approved plan and if not so then document how those changes are acceptable to the board would be a condition of endorsement of the plan, second by Lars Johannessen.**

**Motion hereby made to amend sheet 4 of the current plan of subdivision for 37 Middle Road to be modified as per plan drawn by Millennium Engineering dated May 13, 2016 to be hereby recorded with the following conditions prior to endorsement: 1. receipt of recorded copy of the action by DEP that allows this change; 2.) receipt of copy of the recorded action by the local conservation commission that documents that they have endorsed the changes to the plan on both the local and state; 3.) receipt of a detailed construction schedule for outstanding**

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*work within the next 30 days; 4.) receipt of an interim as-built documenting all the things that have happened to date and a future course of action for verifying infrastructure that has been in place and complies with the approved plan and if not so then document how those changes are acceptable to the board.*

**All in favor.**

**Nipun Jain:** We will need the mylars once the Conservation Commission makes their decision. Once the property is sold to a new owner, the board will require a letter of notification and the new owner will come before you to acknowledge same.

**Motion was made by Robert Laplante to close the meeting. Motion was seconded by Lars Johannessen. AIF.**

**Meeting adjourned at 8:58 PM**